

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MAIONG XIONG,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-21-348-C
)	
OKLAHOMA COUNTY, et al.,)	
)	
Respondents.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed the present action pursuant to 28 U.S.C. § 2241 challenging the validity of her state court convictions.* Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin, who entered a Report and Recommendation (“R&R”) on April 28, 2021, recommending the Petition be dismissed on screening. Petitioner has timely objected.

The substantive facts and law are accurately set out in Judge Erwin’s R&R and with one exception there is no purpose to be served in repeating them yet again. As Judge Erwin noted, Petitioner still has proceedings pending in state court. Thus, this Court should abstain pursuant to Younger v. Harris, 401 U.S. 37 (1971), from hearing the Petition to allow the state court to address the matter in the first instance. Contrary to Petitioner’s argument in her Objection, the question of abstention is not a matter of exhaustion. Nor did Judge Erwin act as an advocate in raising the issue. Rather, abstention is a

* As Judge Erwin correctly noted, Petitioner challenges the validity of her sentence and therefore this action should be and will be construed as brought pursuant to 28 U.S.C. § 2254.

jurisdictional question and its application is mandatory. See Amanatullah v. Colo. Bd. of Med. Exam'rs, 187 F.3d 1160, 1163 (10th Cir 1999) (“Younger abstention is non-discretionary; it must be invoked once the three conditions are met, absent extraordinary circumstances.”). Petitioner fails to demonstrate any error in Judge Erwin’s analysis of the Younger abstention doctrine. Likewise, the Court’s de novo consideration of the issue finds abstention is required.

As set forth more fully herein, the Court adopts, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 5) and this matter will be DISMISSED without prejudice. A separate judgment will issue.

IT IS SO ORDERED this 21st day of June, 2021.


ROBIN J. CAUTHRON
United States District Judge